

STATE OF COLORADO)
) ss.
COUNTY OF ELBERT)

At a specially held and noticed meeting of the Board of County Commissioners for Elbert County, State of Colorado, held at the Courthouse in Kiowa on Wednesday, the 22nd day of January A.D. 2020, there were present:

Rick Pettitt	County Commissioner
Chris Richardson	County Commissioner- Not Present
Grant Thayer	County Commissioner
Amanda Moore	Deputy Clerk to the Board

When the following proceedings, among others, were had and done, to wit:

ORDINANCE 20-01

AN ELBERT COUNTY ORDINANCE TO REGULATE CULTIVATION AND PROCESSING OF INDUSTRIAL HEMP WITHIN ELBERT COUNTY, COLORADO; REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH; AND PROVIDING PENALTIES FOR VIOLATION THEREOF

WHEREAS, pursuant to C.R.S. §§30-11-101(l)(e), 30-11-101(2), 30-11-103, and 30-11-107(l)(e), the Board of County Commissioners of Elbert County, Colorado (hereinafter "Board," "BOCC" or "County"), has the legislative authority to manage the business and concerns of the County and to exercise such other and further powers as are conferred by law when deemed by the Board to be in the interests of the County and its inhabitants, and is further authorized by *inter alia*, C.R.S. §§30-28-101, *et seq.*, C.R.S. §§30-28-201, *et seq.*, and C.R.S. §§29-20-101, 29-20-102, and 29-20-104 *et seq.*, to adopt regulations and ordinances in an exercise of their police powers for the protection of public health, safety, and welfare of the inhabitants of Elbert County; and

WHEREAS, the Board has specific authority to regulate and designate matters of industrial hemp production and land use as it pertains to cultivation and to adopt and amend guidelines and regulations for hemp production and cultivation pursuant to C.R.S. §§24-65.1-101, *et seq.*, in Elbert County; and

WHEREAS, pursuant to C.R.S. § 30-11-103, the Board of County Commissioners of Elbert County, Colorado (hereinafter the "Board"), has the authority to exercise all County powers for the Unincorporated Areas of Elbert County; and

WHEREAS, pursuant to C.R.S. § 35-61-101 *et seq.*, a person engaged in the cultivation of industrial hemp holding a registration issued by the State of Colorado Department of Agriculture (hereafter: CDA), and in compliance with all requirements thereof may engage in cultivation of hemp as an agricultural product so long as County requirements are also met; and

WHEREAS, § C.R.S. 30-15-401(1.7) states that “in addition to any other powers, a board of county commissioners may charge a fee for a local license and adopt resolutions or ordinances to establish requirements on businesses engaged in the storage, extraction, processing, or manufacturing of industrial hemp, as defined in section 35-61-101 (7), or industrial hemp products, as defined in section 25-5-426 (2) (g.5)...” and

WHEREAS, Industrial Hemp, or hemp, is defined within § C.R.S.35-61-101; and

WHEREAS, the Board of County Commissioners has determined the Elbert County Community Development Services Director (hereafter: CDS) is appropriately designated as the County’s principal entity charged with implementation of all requirements set forth below for industrial hemp cultivators and processors operating within the County and coordination with other elements of Elbert County Government necessary to implement the permitting, inspection, and enforcement of the requirements described below to include zoning and subdivision regulatory compliance; and

WHEREAS, the Board of County Commissioners has directed CDS to create and gain approval of a recording method, and compliance and/or validation process which may utilize CDA registration documents (“Colorado Industrial Hemp Registration Application”) and any subsequent CDA documents with the same intent.; and

WHEREAS, the Board desires to adopt this ordinance refining the regulations surrounding land use as it pertains to cultivation and processing of industrial hemp and hereby superseding and revoking all prior ordinances and resolutions or portions thereof inconsistent herewith.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ELBERT COUNTY, COLORADO,

Section 1. Title.

- 1.1 This Ordinance shall be known and referred to as the "Elbert County Industrial Hemp Cultivation and Processing Ordinance," and may be cited and referenced as such.

Section 2. Purpose.

- 2.1 The purpose of this Ordinance is to promote the general public welfare and safety by imposing and enforcing reasonable and necessary restrictions on the cultivation of industrial hemp and processing of the same in Elbert County.

Section 3. No Non-conforming Use Status.

- 3.1 No person, business, activity or use involving the cultivation or processing of industrial hemp in the unincorporated areas of the County prior to the enactment of this Ordinance shall be





deemed to have been legally established under this Ordinance, and no such person, business, activity or use shall be entitled to claim legal nonconforming status under any provision of this Ordinance or applicable law.

Section 4. Definitions.

- 4.1 “Industrial Hemp” has the same meaning as defined by Federal law, or as otherwise defined by Colorado Statute.
- 4.2 “Delta-9 tetrahydrocannabinol” has the same meaning as “tetrahydrocannabinols” as set forth in C.R.S. § 27-80-203(24) and may be abbreviated as THC.
- 4.3 “Cultivation” means the planting, growing and/or harvesting of industrial hemp, including but not limited to hydroponic cultivation and cloning.
- 4.4 “Processing of Hemp” means the refinement of hemp to create products derived from hemp. The processing of hemp shall include production or processing of any byproducts of hemp to include Cannabidiol (hereafter: CBD) derivatives, hemp oils, or CBD oils of any kind, and any foods, sugars, solvents, plastics, fibers, textiles, insulating/insulation, rope, or fuels derived from hemp. Processing of hemp does not include extraction of marijuana psychoactive components, to include THC, (tetrahydrocannabinol) in any form, and is strictly prohibited in Elbert County. Processing hemp is considered light industrial in nature, and not an agricultural activity.

Section 5. Fees and Restrictions on Processing Hemp, and Cultivation of Hemp.

- 5.1 In exercise of its police power authority, and having determined the common methodologies utilized to process hemp into byproducts bear a significant risk to health, safety, and welfare, the BOCC therefore prohibits the processing of hemp within the County except for such methods specifically approved and permitted by Elbert County via review for Special Use by Review Permitting of this process.

The BOCC finds and determines; that the existing zoning and subdivision regulations in relation to hemp cultivation within the processes defined by the state of Colorado and Federal government serves the County’s goals of mitigating the potential adverse impacts of cultivation activities and hemp processing activities, and that properly regulated hemp extraction activities which are properly regulated to ensure risk to the public health, safety, and welfare is mitigated when operated according to County regulation may be an appropriately regulated activity within unincorporated Elbert County.

The BOCC also finds that hemp processing under such permits is appropriate if adequately regulated to prevent the use of butane and other combustible materials; and that the continued operation of industry related to hemp processing may benefit County residents through economic opportunities, property development, a broadening of local job diversity, increased tax revenue, and local job growth.

Hemp Processing shall only be conducted in an approved and permitted facility, expressly excluding residential structures, and in such structures that comply with zoning restrictions and otherwise comply with zoning, building code, local fire code, Elbert County Public Works Department, and any other Elbert County or State requirements and permitting.

The following methods for Processing of Hemp, are prohibited:

- (1) Extraction of hemp using butane solvents, or other combustible materials or such methods prohibited by the State of Colorado for processing as expressed and/or described within C.R.S. 18-18-406.6 or its analogue or progeny statutes, is expressly prohibited. This means amongst other restrictions, that extraction is prohibited using “any liquid chemical, compressed gas, or commercial product that has a flash point at or lower than thirty-eight degrees Celsius or one hundred degrees Fahrenheit, including butane, propane, and diethyl ether, [but specifically excluding alcohol and ethanol...meaning these are allowed].” C.R.S. 18-18-406.6(4).

Approved methods for hemp processing include those approved by Elbert County as a Special Use by Review Application for applicable properties unless such property is located in the Elbert County Economic Development Zone (EDZ) – Under such circumstance any approval of a processing facility in the EDZ must meet all EDZ development requirements and any such additional safety requirements as imposed by Elbert County during the EDZ review process. Any application for processing must show the process to be utilized is technically feasible, safe, and verified by a recognized third party expert in the field by Public Works, CDS, or a local fire district. Any application for hemp processing shall include as part of the application a safety plan also approved by the local fire district.

Any hemp processing must comport with the restrictions contained within this ordinance. Approved facilities and methods may include expeller pressed processing, or mechanical or machine manipulation of hemp or other safe methods approve by a Special Use Review (SUR) Application, or EDZ application process, which has been reviewed and approved by Elbert County through the applicable process, and which does not utilize prohibited methods stated in paragraph 5.1(1)

Processing and extraction of marijuana and THC (tetrahydrocannabinol) in any form is strictly prohibited in Elbert County.

Permitted processing facilities must have proof of testing certifying each shipment/delivery and separate load of hemp meets the State and Federal requirements for hemp (.3% THC or lower), or shall test each shipment/delivery and separate load prior to processing. Proof of such testing shall be kept and available for inspection for 36 months from the time of receipt. Tests which indicate a shipment/delivery is above .3% THC shall be reported to the Elbert County Code Enforcement Office, and a copy of the test results shall be mailed, transmitted via email, or otherwise provided to the Elbert County Code Enforcement Office within two business days of receiving the results.





5.1.1 Processing Fees

Processing permits require County approval, with specific requirements and fees.

Permitting for the Processing of hemp facilities shall be through the Special Use Review (SUR) Application Process. Prior to any approval to process hemp in Elbert County, or to construct or utilize any such facility for such purpose, an applicant must provide any State and/or Federal required inspection report, licensure, or other approval process (for example, Colorado Department of Public Health and Environment (CDPHE), United States Occupational Safety and Health Administration (OSHA) (and provide letters indicating compliance or approval from those agencies if requested by Elbert County), necessary for state or Federal approval of hemp processing facilities in a valid, unexpired format.

5.2 Hemp Cultivation

5.2.1 No Annual Fee

Cultivation of hemp shall not require a permit from Elbert County, nor a fee paid to the County. However, all hemp cultivation must comply with Elbert County zoning, building, subdivision and any other applicable land use regulations.

Cultivation of hemp shall also comply with all Federal and State of Colorado requirements and permitting for the cultivation of hemp.

- (11) Cultivation of hemp requires correct land use and zoning context (A, A2, AR) and, when cultivation takes place within any structure, compliance with all applicable laws, regulations, and codes, including but not limited to health, building, electrical, plumbing, mechanical, sign, fire, and other codes, statutes, and ordinances.
- (12) The cultivation of hemp in Elbert County shall comply with all Elbert County zoning regulations, and is relegated to "Agricultural" zoning on lots sized 35 acres or more, including AR zoning (10+ acres), or A-2 (20 acres). Cultivation of hemp is prohibited and shall not be permitted on parcels in Residential zoning designations (to include R, RA, RA1 RA2, R1, or R2) or on parcels contained within already existing platted subdivision which have an adopted development guide, Subdivision Improvement Agreements, or a Planned Unit Developments (P.U.D.s.) that do not restrict commercial Agriculture, or prohibit such use. Cultivation for a parcel in the P.U.D. that is zoned Agricultural and is thirty-five (35) acres or more, shall be treated as an agricultural parcel and cultivation will be permitted if all other County and State requirements are met.)

Section 6. Enforcement.

6.1 This Ordinance shall be enforced by the Elbert County Sheriff and county code enforcement personnel.

6.2 Violation: It shall be unlawful for any person to violate any provision of this Ordinance.

6.2.1 Any person who violates this Ordinance commits a Class 2 Petty Offense.

6.2.2 The fine for a first offense and for any subsequent offense shall be no less than two-hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) per violation and each day shall be deemed a separate violation.

6.2.3 The remedies provided in this Ordinance shall be cumulative and in addition to any other federal, state or local remedy, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, ordinance, rule, order or regulation.

6.3 *Penalty Assessment:* In accordance with C.R.S. §30-15-402, and §16-2-201 and all other applicable County and State Code, Regulations, or Laws, any applicable penalty assessment procedure is hereby authorized for use by any law or code enforcement officer, or County or District Attorney, vested with authority to issue a Summons and Complaint for violations of this Ordinance.

6.3.1 The penalty assessment notice (citation) shall be a Summons and Complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, and any other matter reasonably adapted to effectuating the purposes of this section.

6.3.2 A duplicate copy shall be sent to the Elbert County Clerk of the Court or otherwise in the county in which the alleged offense occurred.

6.3.3 The provisions herein shall not apply to penalties assessed pursuant to authority of law outside this Ordinance unless this Ordinance is specifically referred to in such other law.

6.3.4 If the person given a penalty assessment notice (citation) chooses to acknowledge their guilt, he or she may pay the specified fine in person or by mail at the place and within the time specified in the notice. If the individual chooses not to acknowledge their guilt, he or she shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which the individual was found guilty, but customary court costs and surcharges shall be assessed against the individual in addition to the fine.





6.4 *Graduated Fine Schedule and Procedure for Payment*: Any person who violates any part of Section 5, shall be punished, upon conviction, in accordance with the following schedule:

- (1) For the first offense, the sum of five-hundred dollars (\$500);
- (2) For the second or subsequent offense, the sum of one thousand dollars (\$1,000).

6.4.1 Whenever a penalty assessment notice (citation) is issued pursuant to this Ordinance, the penalty assessment notice (citation) which shall be served upon the defendant by a code or law enforcement officer, and shall contain the name and address of the defendant; a citation of the Ordinance section alleged to have been violated; a brief description of the offense; the date and approximate location of the commission of the offense; the amount of the penalty prescribed for such offense, including any surcharge and collection costs; and the date the penalty assessment notice (citation) is served on the defendant.

6.4.2 The penalty assessment shall inform the defendant of the opportunity to pay the fine and a five dollar (\$5.00) collection fee, within twenty (20) days unless otherwise provided by law, all fines paid for the violation of this ordinance shall be made payable to Elbert County and submitted to the Elbert County Treasurer's Office and deposited into the general fund of Elbert County, thereby avoiding imposition of court costs and surcharges at a later date.

6.4.3 The penalty assessment notice (citation) shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty is not paid; shall be signed by the code or law enforcement officer; and shall contain a place for the party issued a Penalty Assessment Notice (citation) to elect to execute a signed acknowledgment of guilt and an agreement to pay the penalty prescribed within twenty days (20), as well as such other information as may be required by law, to enable such Penalty Assessment Notice to become a Summons and Complaint, should the prescribed penalty not be paid within the time allowed in this Ordinance.

6.4.4 One (1) copy of said Penalty Assessment Notice shall be served upon the defendant by the code or law enforcement officer and one (1) copy sent to the Elbert County Treasurer. In the event the penalty assessment is not paid to the Elbert County Treasurer within the required twenty (20) day period, the Elbert County Treasurer shall forward all unpaid penalty assessments to the Elbert County Court for docketing on the date of first appearance indicated on the Summons and complaint/Penalty Assessment Notice.

6.4.5 The time specified in the summons portion of said Summons and Complaint must be at least twenty days (20) after the date such Summons and Complaint is served, unless the defendant shall demand an earlier court appearance date.

6.4.6 The time specified in the summons portion of said Penalty Assessment Notice shall be at least thirty days (30) but not more than ninety days (90) after the date such Penalty Assessment Notice is served, unless the defendant shall demand an earlier court appearance date.

6.4.7 The place specified in the summons portion of said Summons and Complaint or of the Penalty Assessment Notice must be a county court within the county in which the offense is alleged to have been committed.

6.4.8 If the defendant is otherwise eligible to be issued a Summons and Complaint or a Penalty Assessment Notice for a violation of this Ordinance and if the defendant is not a resident of Elbert County, in order to secure release, must execute a promise to appear in court on the Penalty Assessment Notice or on the Summons and Complaint.

6.4.9 Unless a person who has been cited for an Ordinance violation pays in a timely manner with adequate and sufficient funds, the penalty assessment as provided in this Ordinance, the person shall appear at a hearing on the date and time specified in the summons portion of the Penalty Assessment Notice and answer the complaint against him or her.

6.4.10 If judgment is entered against a violator, he or she shall be assessed an appropriate penalty, a surcharge, a docket fee, and other applicable costs.

6.5 *Disposition of Fines and Surcharges*: Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this Ordinance shall be paid into the treasury of Elbert County.

Section 7. Severability.

7.1 If any section, subsection, clause, sentence or phrase of this Ordinance are for any reason adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair or invalidate any other provisions of this Ordinance which can be given effect without such invalid provision. The Board hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that anyone part or parts be declared invalid.

Section 8. Repeal.

8.1 Existing ordinances or parts of ordinances covering the same matters this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance. This shall apply to and include ordinance 18-1.

Section 9. Interpretation.

9.1 This ordinance shall be so interpreted and construed as to effectuate the prohibition of the processing of industrial hemp into byproducts except for such processes specifically approved and permitted by Elbert County through the Special Use Review (S.U.R.) process, for the purposes of protecting private property and ensuring the health, safety, and welfare of the public.



Section 10. Effective date.

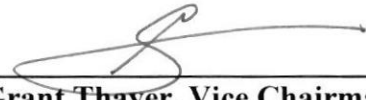
10.1 This Ordinance, upon adoption on the second and final reading, shall become effective, and shall remain in effect until such time as this Ordinance is amended, temporarily suspended or repealed.

Section 11. Certification.

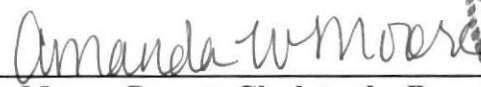
11.1 The Elbert County Clerk shall certify to the passage of this Ordinance and shall have on file copies of this Ordinance available for inspection by the public during normal working hours.

INTRODUCED, READ AND DESIGNATED AN ORDINANCE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC HEALTH, SAFETY, AND WELFARE ON FIRST READING, on the 19th day of November 2019.

THE BOARD OF COMMISSIONERS OF ELBERT COUNTY, COLORADO

By: 
Grant Thayer, Vice Chairman

ATTEST:

By: 
Amanda Moore, Deputy Clerk to the Board

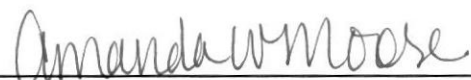


ADOPTED ON SECOND AND FINAL READING, AS AMENDED AND AFTER BEING DESIGNATED AN ORDINANCE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC HEALTH, SAFETY, AND WELFARE, on the 22nd day of January, 2020, after being published in the Elbert County News for First Reading in its entirety on November 7, 2019, and published in the Elbert County News for Second Reading in its entirety on December 5, 2019.

THE BOARD OF COMMISSIONERS OF ELBERT COUNTY, COLORADO

By: 
Grant Thayer, Vice Chairman

ATTEST:

By: 
Amanda Moore, Deputy Clerk to the Board





CERTIFICATE

I hereby certify that the foregoing **Ordinance No. 20-01** was introduced, read and adopted upon second reading at a regular meeting of the Board of County Commissioners on January 22, 2020, and upon being as designated as an ordinance necessary for the immediate preservation of public health, safety, and welfare, went into immediate effect thereafter.

This same ordinance was introduced and first reading occurred at the regular meeting of the Board of County Commissioners of Elbert County on 19th day of November, 2019, and the same was published in its entirety the Elbert County News, a newspaper of general circulation published in its entirety in Elbert County, on 7th day of November, 2019. Said Ordinance became effective the 22nd day of January, 2020.

ATTEST:

By:

Amanda Moore, Deputy Clerk to the Board

[illegible]

Subscribed and sworn to before me this 22nd day of January, 2020 by Amanda Moore, as Deputy Clerk to the Board.

6-15-2021
My Commission Expires

~~Notary Public~~

CERTIFICATION

I, Amanda Moore, Elbert County Deputy Clerk to the Board, do hereby certify that the foregoing **Ordinance No. 20-01**, entitled, **AN ELBERT COUNTY ORDINANCE TO REGULATE CULTIVATION AND PROCESSING OF INDUSTRIAL HEMP; REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH; AND PROVIDING PENALTIES FOR VIOLATION THEREOF**, is a true, correct and complete copy from the records in my office, that said Ordinance was duly adopted by the Board of County Commissioners of Elbert County and is in full force and effect.

ATTEST:

By:

Amanda Moore, Deputy Clerk to the Board

